

Amendment Under 37 C.F.R. § 1.111  
Serial No.: 10/716,422  
SUGHRUE MION, PLLC Ref: Q78585

### **REMARKS**

Dealing with preliminary matters first, for the first time, the Examiner has objected to the specification as failing to provide proper antecedent basis for the claimed subject matter.

Applicant has amended the specification in accordance with the Examiner's objections in mind.

Thus, it is requested that this objection be withdrawn. With respect to the phrase, "first sprinkling stream," this phrase is included in the specification at page 4, par. 3.

Claims 1 and 3-20 are all the claims pending in the application. Of these claims, claims 1 and 3-20 are rejected under 35 U.S.C. § 112 (second paragraph) as being indefinite and claims 1 and 3-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Francia (U.S. Patent No. 6,279,457).

In view of the above amendments to the claims, it is submitted that the § 112 (second paragraph) rejection has been overcome.

With respect to the prior art rejections, Applicant respectfully traverses the Examiner's rejection for the following reasons. As discussed below, Applicant is disappointed by the Examiner's withdrawal of allowable subject matter, particularly since the Examiner has completely failed to sustain his burden of establish a *prima facie* case of obviousness. Indeed, the Examiner does not even cite to one piece of prior art to teach the specific features that just last April (of 2006) he considered to be patentable.

The claims are directed to a sprinkling device which is adapted to be associated with a fermentation tank and such a device is not disclosed in the prior art. The sprinkling device of the

invention allows the conversion of a conventional fermentation tank into a fermentation tank with sprinkling and recirculation of the wine must, as disclosed on page 2 of the specification.

In the prior art there is no disclosure of a sprinkling device which can be attached to a conventional tank. Therefore, the invention provides a very economical and simple solution to the problem of allowing to generate recirculation and sprinkling of the must in a conventional tank.

Moreover, the Examiner fails to acknowledge that the prior art does not disclose a sprinkling device which "can discharge" the wine must by means of a second sprinkling stream when the level of the recirculated wine must in the auxiliary tank reaches a predetermined level.

Such feature is not known in the prior art and is not suggested by Francia. This feature allows the operator of the fermentation tank to generate a second sprinkling stream by simply acting on the flow rate of the pump 30 (*See*, page 6, last 2 paragraphs). This feature is particularly important with the auxiliary sprinkling device of the invention to avoid the need for additional operating devices causing the opening of second discharge means. Even a cursory review of the Office Action shows that the Examiner has failed to consider this important limitation of the claims. Thus, it is submitted that each of the independent claims patentably distinguish over the prior art.

Further, Applicant is at a loss as to why the Examiner withdrew the previous allowability of the claims. More specifically, in the previous Office Action, the Examiner indicated that dependent claims 2-5 and 8-16 contained allowable subject matter. In response, Applicant

amended independent claim 1 to include the limitation of claim 2 and amended claims 3 and 8 to be in independent form.

Claim 2 (which has been incorporated into claim 1) recited that the second discharge means comprise an auxiliary discharge opening in the closure member and an overflow duct communicating with the opening in order to deliver the recirculated wine must through the auxiliary opening. In the present Office Action, the Examiner acknowledges that Francia does not teach this feature, but asserts without any support whatsoever, that this feature would have been obvious to one of ordinary skill in the art. There is not even an explanation as to why back in April, 2006 the Examiner believed this distinction to be patentable, but now believes that this feature would have been obvious to one of ordinary skill in the art. Contrary to the Examiner's assertion, this feature is an important feature of the invention and certainly the invention disclosed in Francia does not have a substitute feature which permits it to "perform equally well."

The same applies to the features of claims 3 and 8. Claim 3 recites that the second discharge means comprises an auxiliary discharge opening and a diffuser member which is associated with the auxiliary discharge opening and which can interfere with the sprinkling stream coming from the opening in order to modify the shape of the stream. Why is this feature, which the Examiner acknowledges is not disclosed in Francia, all of the sudden considered to be obvious? And with respect to claim 8, why is the three-way valve means no longer considered to be patentable? This change in course by the Examiner is most distressing considering the fact that the present Office Action is devoid of any citation to prior art which teaches that these

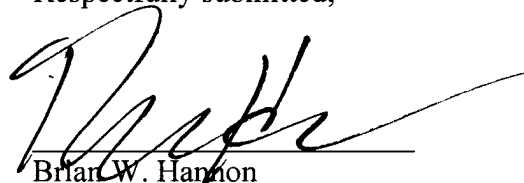
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features were known in the art, and of any discussion as to why it would have been obvious to one of ordinary skill in the art to modify the Francia device to include these features. In short, the Examiner has simply changed his mind, without satisfying his burden of showing that the claims would have been obvious to one of ordinary skill in the art. Applicant is confident that these rejections will not be sustained by the Board of Patent Appeals and Interferences.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brian W. Hanlon', written over a horizontal line.

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**23373**

CUSTOMER NUMBER

Date: May 9, 2007